

August 28, 1935

Mr. P. J. Moran
Secretary, Board of Education
Arizona State Teachers College
Flagstaff, Arizona

Dear Mr. Moran:

In reply to your recent communication wherein you inquire as to the propriety of school boards insuring busses for fire and theft, and property damage, you are advised as follows:

That it is the duty of trustees and boards of education to protect the State from loss and that it is proper and legal for such boards to arrange to indemnify the State for loss by fire and theft insurance.

If by "property damage" you mean insurance to indemnify the State against loss resulting because of the destruction or damage to the property of others, you are advised that it is not proper and legal to obtain insurance for such purpose for the reasons enumerated in the opinion from this office to Mr. Hendrix as of April 27, 1935; if, however, you mean to protect the busses in the event that the busses are damaged, then it is proper to carry insurance for this purpose and such type of insurance is known as "Collision Insurance."

As to the matter of carrying football players: These instances are generally difficult of precise ascertainment and each case is judged on the facts presented. The theory of the law is that the State is not liable in the exercise of a governmental function. The State is exercising a governmental function when its activities have to do with the maintenance and supervision of a public school system and providing for the education and teaching of children of the State.

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I am quite dubious that the transportation of football players is a governmental function.

In such cases I think the suggestion made in the opinion of April 27, 1933, is applicable.

I do not understand the question intimated in your last paragraph--particularly the statement "such a driver, without any responsibility whatever." If you will restate the same, I shall be glad to attempt to answer it.

Yours very truly,

Attorney General

Assistant Attorney General

JFG:SC